Supreme Court of the United States

OCTOBER TERM 1902.

No. 342
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JAMES H. McKENNEY,
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TOLTEC RANCH COMPANY, Plaintiff in Error,

vs.

WILLIAM BABCOCK AND LOUISA BABCOCK, Defendants.

BRIEF OF PLAINTIFF IN ERROR.

T. D. JOHNSON,
Attorney for Plaintiff in Error.

MAXWELL EVARTS,
LINDSAY R. ROGERS,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1902.

No. 317.

TOLTEC RANCH COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM BABCOCK AND LOUISA BABCOCK, DEFENDANTS.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This is an appeal by the plaintiff in error from the decision of the Supreme Court of the State of Utah, affirming the judgment of the District Court of Box Elder County of said State, and from the judgment of said District Court.

The two actions, Nos. 270 and 278, respectively, between the same parties were, at the hearing of the District Court, consolidated and tried together; No. 270 is an action in ejectment brought by the plaintiff against the defendant, William Babcock, for the recovery of the possession of a part of Section 17, Township Eleven (11) North, Range Two (2) West, Salt Lake Meridian, U. S. Survey (Transcript, 1, 20).

No. 278 is an action in claim and delivery for certain crops, consisting of hay and seed grown upon the lands described in No. 270 (trans. 11).

The defendant William Babcock, upon the overruling of his demurrers to the complaint of plaintiff, answers the same, setting up title in his wife, Louisa Babcock (trans. 3, 12), and pleads affirmatively the statute of limitations (trans. 3-4) in bar of plaintiff's actions (trans. 13-14).

Louisa Babcock, by leave of court, is made a party and files an answer to plaintiff's complaint of the same tenor and effect as that of William Babcock, and also cross-complains (trans. 5-7).

The trial of said causes resulted in judgment for the defendants, which, on appeal to the Supreme Court of the State of Utah, was affirmed, and from said judgment and decision this appeal is prosecuted.

The plaintiff at the trial of said actions, to make out its case, introduced in evidence the patent of the United States to the Central Pacific Railroad Company, bearing date September 5, 1896, conveying the lands in controversy, with other lands, and after introducing the articles of incorporation of plaintiff, and a demand for and the value of the personal property sued for, it rested (trans. 17).

The defendants introduced testimony tending to prove an adverse holding of the said lands under the statute of limitations by the defendant Louisa Babcock (trans. 18-28).

Over the objection of plaintiff, the defendants were permitted to introduce in evidence certified copies of letters written by the Commissioner of the General Land Office to the Register and Receiver at Salt Lake City, designating certain lands to be withdrawn under the grants of Congress to said railroad company (trans. 28).

The plaintiff in error makes the contention that there can be no title acquired by the defendant Louisa Babcock by any adverse holding of the lands in dispute prior to the issuance of the patent by the United States to the said railroad company, and has made the following assignments of error herein:

(1). The Court erred in affirming the judgment of the trial Court.

(2). The Court erred in holding that such title to the land in dispute passed to the Central Pacific Railroad Company of California from the United States of America under the Acts of Congress of July 1, 1862, and July 2, 1864, said Acts being found and printed in Volume 12 of the United States Statutes, pages 289 and following, and Volume 13 of the United States Statutes, on page 356 and following, respectively; that the said intervenor could and

had acquired title thereto against the plaintiff and its predecessors in interest by adverse possession under the statutes of limitations of the Territory and State of Utah, said statutes of limitations being found and printed in Volume 2 of the Compiled Laws of 1888 of the Territory of Utah, at page 220 and following, and found and printed in the Revised Statutes of the State of Utah, at page 634 and following, respectively.

(3). The Court erred in holding and deciding that the said intervenor could and had acquired title to the said lands in dispute by adverse possession under the statute of limitations, by an adverse holding of said lands prior to September 5, 1896, the date of the patent to the Central Pacific Railroad Company from the United States.

(4). The Court erred in holding and deciding that the said intervenor could and had acquired title to the said lands by adverse possession under the statute of limitations, without proof of the date of the filing of the map of definite location of the line of railroad of said Central Pacific Railroad Company in the office of the Secretary of the Interior.

(5). The Court erred in holding and deciding that the said intervenor could acquire and had acquired title to the said lands in dispute without proof of the date of the survey of the said lands by the United States.

(6). The Court erred in holding and deciding that the said intervenor could acquire and had acquired title to the said lands in dispute by adverse possession under the said statutes of limitations, without proof of the date of selection of the said lands by the said railroad company (trans. 83-84).

ARGUMENT.

The Supreme Court of the State of Utah, in reaching its conclusion that the bar of the statute of limitations of the State of Utah constituted a defense to the action of plaintiff, rely upon the following cases of this Court:

Deseret Salt Company vs. Tarpey, 142 U. S. 241.

Tarpey vs. Madsen, 178 U. S. 215.

(trans. 78-79).

And under the authority of these cases held that the statute of limitations ran in favor of the defendant, as well before as after the issuance of the patent to the railroad company.

And as shown by the record, unless this were true the defendants must fail.

Under the provisions of the statutes of the Territory and State of Utah, there must be an adverse holding of lands for at least a period of seven years by the defendants, before its provisions can be invoked.

Compiled Laws of Utah, 1888, Vol. 2, Page 220.
Revised Statutes of Utah, 1898, Page 634.

This action was commenced in the year 1899, the patent of the Government was issued to the railroad company September 5, 1896.

It is undoubtedly the law that the statute of limitations has no application and cannot be invoked in favor of a party claiming title thereunder, so long as the *legal title* remains in the Government.

Gibson vs. Chouteau, 13 Wall. 92.
Redfield vs. Parks, 132 U. S. 239.

The contention of the plaintiff in error is that it does not follow, as held by the Supreme Court of the State of Utah, because the railroad company may have acquired the legal title by virtue of the grant of congress, that the statute of limitations runs, or that title may be acquired by adverse possession prior to the issuance of patent, and this contention is made, notwithstanding the decision of this Court in the case of Langdeau vs. Hanes, 21 Wall. 521, because of the exception stated in the opinion in that case.

Certain conditions in the grants of Congress to the Pacific Railroads have since been recognized, and certain exceptions contained in said grants have been given effect by the decisions of this Court, which may be said to limit the broad scope which might be inferred from the language used in the case of Salt Company vs. Tarpey (supra).

Ankeny vs. Clark, 148 U. S. 345.
Barden vs. Northern Pacific R. R. Co., 154 U. S. 288.
Nelson vs. N. P. R'y Co.

(decided by this Court January 26, 1903).

Reverting to the case of Langdeau vs. Hanes (supra), Mr. Justice Field said: "If the claim be to land with defined boundaries, or capable of identification, the legislative confirmation perfects the title to the particular tract, and a subsequent patent is only documentary evidence of that title. If the claim be to quantity, and not to a specific tract capable of identification, a segregation by survey will be required, and the confirmation will then immediately attach the title to the land segregated."

In the case of Ankeny vs. Clark this Court, quoting from Salt Company vs. Tarpey, says:

"In the case of Deseret Salt Company vs. Tarpey the Court, per Mr. Justice Field, regarding the failure or omission to pay the survey charges as operative to 'preserve to the Government such control over the property granted as to enable it to enforce the payment of these costs, and for that purpose to withhold its patents from the parties entitled to them until such payment' and thus to give the Government a lien for said costs."

And adds: "We therefore conclude that Ankeny, the defendant below, if he held only a title derived from the Northern Pacific Company, and if that company had not paid the costs of surveying and had not received a patent, did not hold such a title as it was obligatory on the plaintiff to accept."

In the case of Barden vs. N. P. R. R. Co., (supra), this Court held, in substance, that even after the performance of all the conditions subsequent by the railroad company, as contemplated by the grant, the discovery of mineral *before patent had actually issued, would defeat the railroad company's title.* It therefore follows that until patent actually issues, the railroad companies or their grantees have not such a title as would put the statute of limitations in motion.

In the case at bar, the only evidence in the record showing that the land in dispute was not within any of the exceptions contained in the grant, and the compliance with the conditions precedent to the issuance of the patent, is the patent itself.

As stated in the case of Langdeau vs. Hanes (supra), "a segregation by survey will be required."

Except as recited in the patent, there is no evidence showing the date of the filing of a map of definite location with the Secretary of the Interior, nor when the land was surveyed and ascertained to be an odd-numbered section, as contemplated by the grant, nor when the Government lien was discharged by the selection of same by the railroad company, and the payment of the fees for surveying, selecting and conveying same, nor, except as appears in the patent, no proof to show the railroad had ever been built at all.

The record fails to show when this land was surveyed, when selected by the railroad company, or when the fees were paid. That all these things were done is proved, of course, by the issuance of the patent, but there can be no presumption as to the time, unless it might be said to be upon the date of the patent itself.

If it is true that no presumption will be indulged as to the time of the selection of the lands by the railroad company, or of the date of its survey by the Government, or the time of the payment of the fees required by law, and if these things, or either of them, are required to be done before the statute of limitations would begin to run, it follows that the defendant has not acquired any title by her alleged adverse holding, and the judgment should be reversed.

Respectfully submitted,

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